



TAX ON INSURERS ANNOTATIONS

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TAX ON INSURERS ANNOTATIONS

Deficiency Assessment

When an insurer notifies the Commissioner that it owes a higher tax liability than was initially reported, the Commissioner should propose the self-reported underpayment as a deficiency assessment under Revenue and Taxation Code (RTC) section 12422, including any applicable negligence and/or fraud penalties. It is inappropriate to automatically include a 10% late payment penalty pursuant to the provisions of RTC section 12631 because such provisions specifically except a tax determined as a deficiency assessment from such penalty. Based on the Commissioner's proposal the Board would issue a deficiency assessment under RTC section 12424. 6/11/90A. (Am. 2003-3, Am. 2005-1).

Captive Insurer

An admitted captive insurer which contracts with its parent corporation or other affiliated entities to indemnify them from loss, damage, or liability from a contingent or unknown act, is regulated by the Commissioner as an insurer and is subject to the California gross premiums tax. 2/05/98. (M99-1, Am. 2003-3).

Conservatorship

When an insurer is placed into conservation, the creation of the conservatorship does not trigger an automatic stay against the Board proceeding in a pending matter. An automatic stay would only issue pursuant to court action and the Board would either be involved in those arguments regarding the stay or, at a minimum, served with notice of the court action. 4/26/91. (Am. 2003-3).

Excess Prepayment of Tax

Under Revenue and Taxation Code section 12257, if an insurer's prepayments for a calendar year exceed the amount of tax due for that year, the insurer may elect to credit its overpayment against the amounts due and payable as the prepayment for the first quarter of the following year. This provision does not grant an insurer who makes an overpayment of prepayments an election to apply any remainder in excess of the first quarter prepayment to the insurer's second quarter prepayment. Under Revenue and Taxation Code section 12977, the Controller is required to credit any excess to any amounts then due and payable from the insurer and refund the balance. As such, the remaining net credit in excess of the first quarter prepayment due will be refunded. Any inappropriate application by the insurer of a prepayment excess to its second quarter prepayment will subject the insurer to a penalty with respect to a resulting late second quarter prepayment. 12/9/92. (Am. 2003-3, Am. 2005-1).

Delinquent Tax Liability Payment Application

Payments received after the taxpayer has filed a timely petition for redetermination are not prepayments but are payments on a delinquent tax liability. Tax is due and payable on April 1 of the year following the year in which the gross premiums are received. Whenever an insurer's tax liability is not paid by the date upon which interest begins to accrue, that tax is delinquent. Any payments received on a delinquent tax liability are applied according to Revenue and Taxation Code section 12636.5. 11/14/91. (Am. 2003-3).

Petition for Redetermination

An insurer seeking petition for redetermination on issues similar to a previously filed petition for redetermination, may request that both assessments be heard at the same time when each petition for redetermination is filed timely. There is no statutory authority for the Board to accept a petition for redetermination when it is not filed timely. The recourse available to the taxpayer is to pay the assessment, plus applicable interest and penalties, and then file a timely claim for refund. If that claim is denied, the taxpayer may then seek judicial relief. 4/6/88. (Am. 2003-3).

Reduced Rate—Revenue and Taxation Code Section 12202

In order to qualify for the reduced rate under Revenue and Taxation Code section 12202, the insurer must provide confirmation that the subject premiums were received from policies issued to pension or profit-sharing plans which were exempt or qualified under the relevant sections of the Internal Revenue Code. Letters from the Internal Revenue Service stating that the form of the insurer's policy would be acceptable to the Internal Revenue Service are not sufficient to confirm that the pension or profit-sharing plans were actually exempt or qualified under the relevant sections of the Internal Revenue Code. 7/21/89. (Am. 2003-3).

Reduced Rate—Internal Revenue Code Section 501(a)

The reduced rate does not apply to premiums from policies issued to plans which are exempt under Internal Revenue Code section 501(a) that are not pension or profit-sharing plans. Premiums from policies issued to such plans must be taxed at the full rate. Premiums from policies issued to plans meeting the two requirements of Revenue and Taxation Code section 12202 (pension or profit sharing plans that are exempt or qualified under the relevant Internal Revenue Code sections) qualify for the reduced rate even if the policy is not an annuity. Plans that come within the sections of the Internal Revenue Code listed in Revenue and Taxation Code section 12202, other than Internal Revenue Code section 501(a), virtually always qualify for the reduced rate.

Examples of premiums not meeting both tests under Revenue and Taxation Code section 12202 are: (i) premiums from policies issued to policyholders organized under Internal Revenue Code section 501(c)(3) and exempt under Internal Revenue Code section 501(a); or, (ii) premiums from policies issued to voluntary employees' beneficiary associations (VEBA) organized under Internal Revenue Code section 501(c)(9) and exempt under Internal Revenue Code section 501(a). 5/8/90. (Am. 2003-3).

Reduced Rate—Policies Paid by Individual Policyholder

Under Revenue and Taxation Code section 12202, the reduced rate applies only to premiums from policies that are actually held and paid by pension or profit-sharing plan policyholders which are exempt or qualified under the relevant sections of the Internal Revenue Code. The policyholder must be "exclusively" a qualified pension or profit-sharing plan. Evidence sufficient to satisfy the requirement of a qualifying policyholder includes the letter of qualification issued by the Internal Revenue Service. Policies for which premiums are paid by an individual after termination from a pension or

profit-sharing plan are no longer regarded as issued to a pension or profit-sharing plan within the meaning of Revenue and Taxation Code section 12202. Premiums from such policies are subject to tax at the full rate. 3/24/89A. (Am. 2003–3).

Relief of Penalty

Revenue and Taxation Code section 12258 imposes a penalty on any insurer who fails to timely pay a prepayment. An insurer seeking relief from the penalty is required to file a statement with the Board, signed under penalty of perjury, setting forth the facts upon which the request for relief is based. (Revenue and Taxation Code section 12636.) The Board has the sole jurisdiction to grant or deny an insurer's request for relief from the penalty. 12/2/96.

Retaliatory Tax—Alien Insurer, California Constitution

Under the specific provisions of Section 28(f)(3) of Article XIII of the California Constitution and Insurance Code section 685.2, the domicile of an alien insurer, other than insurers formed under the laws of Canada, is the state in which its principal place of business is located. To determine otherwise, would directly contravene these specific provisions of the California Constitution and Insurance Code and would require a finding that they are unconstitutional. The Board has no power to declare a statute or the California Constitution itself to be unconstitutional. 6/8/90. (Am. 2003–3).

Retaliatory Tax—Redomestication

A retaliatory tax shall be assessed based on the insurer's domicile at the end of the tax year. When an insurer redomesticates, the year an application for redomestication is approved by both incoming and outgoing domestic Departments of Insurance determines the year in which the insurer's domicile changes. 5/2/88. (Am. 2003–3).

Retaliatory Tax—Basis for Calculation

It is appropriate to utilize whatever tax method or tax rate is applied (i.e., tax imposed) to an out-of-state insurer in its state of domicile as the basis for calculating the retaliatory tax in this state. Where the formula for calculating the tax by an out-of-state insurer's state of domicile is the lesser of two alternatives, the tax imposed is the minimum amount regardless of whether the taxpayer calculated and paid the maximum amount. 4/12/95. (Am. 2003–3).

Voluntary Payments

The Board can accept the voluntary payment of taxes that have been underreported for periods which the Board is barred by the statute of limitations from issuing a deficiency assessment. The Board may also retain any interest voluntarily paid with respect to those taxes. The basis for retaining such interest would be its voluntary payment. The Board cannot affirmatively attempt to collect interest on voluntarily-paid taxes in any manner, whether by deficiency assessment or billing. Any claim for refund of voluntary payments on taxes that are barred by the statute of limitations, is governed by Revenue and Taxation Code section 12978. 11/15/90. (Am. 2003–3).

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